

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

**R.O.C. CONSTRUCTION CO., INC.,
Respondent.**

**Docket No. FMCSA-2009-0087¹
(Eastern Service Center)**

ORDER ON BINDING ARBITRATION

1. Background

On January 8, 2009, the Rhode Island Division Administrator for the Federal Motor Carrier Safety Administration (FMCSA) issued a Notice of Claim (NOC) charging Respondent, R.O.C. Construction Co., Inc., with one violation of 49 CFR 382.115(a) for failing to implement an alcohol and/or controlled substance testing program. The NOC proposed a civil penalty of \$5,280.

On January 23, 2009, Respondent replied to the NOC. In its Reply, Respondent did not contest the violation and requested resolution of the civil penalty. On March 26, 2009, Claimant, the Field Administrator for the Eastern Service Center for FMCSA, stated that the Reply was in essence a request for binding arbitration, to which he did not object.

2. Procedures

The arbitration process will be conducted pursuant to FMCSA's published

¹ The prior case number of this matter was RI-2009-0017-US0042.

guidance on this subject.² The parties will work together to select an arbitrator and establish procedures that will govern the binding arbitration. The parties will be contacted by a representative from the Department of Transportation's Center for Alternative Dispute Resolution (CADR), who will answer any questions the parties may have about the process and will assist the parties in choosing an arbitrator.

a. Options in Choosing the Arbitrator

The parties may choose an arbitrator from the following sources:

1. Civilian Board of Contract Appeals Judges or representatives from other government agencies who have been trained in arbitration;
2. Uncompensated neutral parties from local communities; or
3. Compensated neutral parties from outside the government, whose costs are to be shared by agreement of the parties.

The selected arbitrator will assist the parties in developing procedures and preparing an Arbitration Agreement.

b. Arbitration Format

Respondent may have attorney or non-attorney representation, or it may appear *pro se*, that is, it may represent itself in the arbitration proceedings. With the consent of both parties, the arbitrator may conduct hearings in person or by telephone, video conferencing, or computer.

Each party will present evidence supporting the penalty and terms of payment it considers appropriate. The evidence may not contest whether or not the violation

² See *Guidance for the Use of Binding Arbitration under the Administrative Dispute Resolution Act of 1996*, Docket No. FMCSA-2003-14794, 69 Fed. Reg. 10288, March 4, 2004.

occurred because Respondent has conceded the violation as a condition of arbitration. Neither written submissions nor oral argument may contain any reference to the amount of the civil penalty proposed by the party. At a time specified by the arbitrator, each party will present to the arbitrator and to the opposing party a sealed envelope containing the amount of its total proposed civil penalty and a proposed payment plan. Before opening the envelopes, the arbitrator will determine the appropriate civil penalty and payment plan based upon the evidence presented during the proceeding. The arbitrator will provide his or her determinations in writing to the parties. The arbitrator will then open the envelopes and select the civil penalty and payment plan that is closer to the arbitrator's determinations. The arbitrator has the discretion to select one party's proposed total civil penalty and the other party's proposed payment plan.

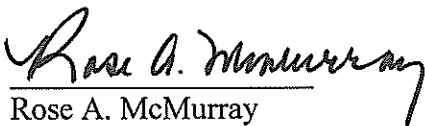
c. Maximum and Minimum Penalty Amounts

The parties may not propose an amount higher than the amount assessed in the NOC. There is no minimum statutory penalty for the violation.

d. Limited Appeals

The arbitration award is binding on the parties. Appeals from arbitration awards are generally limited to fraud or misconduct in the proceedings. *See* Federal Arbitration Act, 9 U.S.C. § 10.

It Is So Ordered.


Rose A. McMurray
Assistant Administrator
Federal Motor Carrier Safety Administration

4-24-09
Date

CERTIFICATE OF SERVICE

This is to certify that on this 21 day of April, 2009 the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

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